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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,259	11/21/2003	Edward Paul Carlin	9437Q	2809
27752	7590	11/01/2005		
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER EVANS, CHIVONNE LAURIE	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,259

Applicant(s)

CARLIN ET AL.

Examiner

Chivonne L. Evans

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08/11/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoelling (2002/0151859). Schoelling teaches a tampon made of compressed fibrous material with an insertion end, a recovery end, a longitudinal and radial axis, and an outer surface with longitudinal ribs (first and second surfaces) that form vertexes in both the distal and proximal portions of the tampon whereas a vertex is defined as a point of intersection of lines, with respect to claims 1 and 10 of this application (Paragraph 0009). Being that the vertex is a point, it is parallel with both the longitudinal and horizontal axis as shown in Figures 1 and 2, regarding claims 2, 11 and 12. The surfaces, grooves or ribs taught by Schoelling are indeed spirally shaped, and the vertexes are evenly spaced as shown in Figure 1 and stated in Paragraph 0009, with respect to claims 3-4 and 13-14. The tampon taught by Schoelling can either have a uniform density over a cross-section or ribs that extend radially outward (varying density), with a highly compressed core (Paragraph 0009) with regards to claims 5-7 and 15-17. Also, there is a withdrawal member shown in Figure 1, 35 as well as a

finger indent on the recovery end of the tampon, Paragraph 0040, with regards to claims 8-9 and 18-19.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of US 2005/0113786 (copending Application No. 10/719785). Although the conflicting claims are not identical, they are not patentably distinct from each other because; both sets of claims reveal the same structure of the invention with the addition of a few words (i.e. in claim 1 of the publication, an angle, which is inherently present when a vertex is formed therefore is present in the structure claimed in this application, is noted). Also, with the vertexes being parallel with the longitudinal axis, a radial axis is formed as well. The claims are connected with each other as follows:

- a. Claim 1 corresponds with claims 1 and 10 of this application whereas claim 1 of the publication discloses the side walls formed via a plurality of

recessed portions or surfaces, intersecting one another to form vertexes; and in this application, the applicant suggest first and second surfaces forming vertexes with which it is obvious to one skilled in the art that the said surfaces and or said walls will have a proximal and a distal end.

b. Claim 2 corresponds with claims 2 and 11-12 of this application whereas vertex resulting from claim 1 is parallel with said longitudinal axis and because of the radial axis inherently formed by the spiral surfaces and considering that a vertex is a point of intersection of lines, the vertex would be parallel to the horizontal axis as well.

c. Claim 3 directly corresponds with claims 3 and 13 of this application.

d. Claim 4 directly corresponds with claims 4 and 14 of this application

e. Claim 5 directly corresponds with claims 5 and 15 of this application.

f. Claim 6 directly corresponds with claims 6 and 16 of this application.

g. Claim 7 directly corresponds with claims 7 and 17 of this application.

h. Claim 8 directly corresponds with claims 8 and 18 of this application.

i. Claim 9 directly corresponds with claims 9 and 19 of this application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of US 2005/0113789 (copending Application No. 10/719799). Although the conflicting claims

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are not identical, they are not patentably distinct from each other because; both sets of claims reveal the same structure of the invention with the exception of the interchangeable language such as using "walls" rather than "surfaces," as well as "proximal" and "distal" ends whereas the applicant does not clearly defined a boundary that specifies which end of the tampon is the proximal or distal end, therefore the proximal end defined in the copending application can be equivalent to the distal or proximal end claimed in this application. Also, with the vertexes being parallel with the longitudinal axis, a radial axis is formed as well and in both applications the vertex resulting from claim 1 is parallel with said longitudinal axis and because of the radial axis inherently formed by the spiral surfaces and considering that a vertex is a point of intersection of lines, the vertex would be parallel to the horizontal axis as well. Claims 1-9 correspond with claims 1-9 of the copending application, respectively and claims 10-19 correspond with claims 1-9 of the copending application, respectively as well.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant via the Information Disclosure Statement already notes the prior art relevant to this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chivonne L. Evans whose telephone number is 571-272-8686. The examiner can normally be reached on between 6:30-3:30, Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Chivonne L Evans
Examiner
Art Unit 3761

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TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER
